IN THE HIGH COURT OF BOMBAY AT GOA.

COMPANY APPLICATION NO. 191-O OF 2001.

The Official Liquidator,
High Court of Bombay,
Panaji Bench, represented
by M/s. Bhartiya Development
Finance Limited (in
liquidation). ... Applicant.

Versus

1. Dulu K. Kerkar,
   Gunawanti Niwas,
   Usgaon, Goa.
2. Pundalik S. Bagkar,
   c/o Goa Meat Complex
   Quarter, Usgaon, Goa.
3. Prasad P. Prabhugaonkar,
   P.W.D. Contractor,
   Kodar, Ponda, Goa. ... Respondents.

Ms. Amira Razak, Advocate for the Applicant.

Coram: P.V. HARDAS, J.

Date: 2nd August 2002.

ORAL ORDER.

Heard Miss Razak for the applicant. The respondents 1 to 3 are duly served. Mr. D.P. Bhise, learned counsel, had appeared for respondent no. 1. However, neither the respondent no. 1 nor his counsel was present when the matter was called out on 28th June, 19th and 26th July 2002. By Order dated 28th June 2002, the applicant was permitted to file an affidavit in lieu of oral evidence. Accordingly, the applicant had filed the affidavit on 26th July 2002. The respondents and the counsel for respondent no. 1 are absent when the matter is called out today.

2. The respondent no. 1 had applied for loan of Rs. 75,000/- for the purpose of house repairs by his application dated 13th July 1996. The respondent no. 1 had also sent a letter requesting for a loan of Rs. 75,000/-. The said application and letter are at Exhibits A.W.1/1 and A.W.1/2 respectively. In consideration of the application for loan by the respondent no. 1, the company under liquidation had sanctioned loan of Rs. 75,000/- to the respondent no. 1 and the Agreement of Loan was executed by respondent no. 1 and respondents 2 and 3 as guarantors on 30th September 1996. By virtue of the said Agreement, the respondents 1 to 3 are jointly and severally responsible for repayment of the loan of Rs. 75,000/- in monthly instalments of Rs. 4,531/-. The said loan was to be repaid on or before 1st September 1998 with interest at the rate of 22.5% with quarterly rests. The said Agreement is at Exhibit A.W.1/3. Towards the sanction of the loan, the respondent no. 1 signed a Declaration alongwith respondents 2 and 3 for repayment of the loan amount. The Declaration dated 30th September 1996 is at Exhibit A.W.1/4. Towards the receipt of consideration, the respondents 1 to 3 had also executed a Demand Promissory Note dated 30th September 1996 for payment of the amount of Rs. 50,000/- jointly and severally with interest at the rate of 22.5% besides penal interest at the rate of

48%. The Demand Promissory Note is at Exhibit A.W.1/5. The respondent no. 2 has executed a letter authorising his employer to deduct from his salary and pay the same to the company in respect of the loan amount. The said letter is at Exhibit A.W.1/6. The Salary Certificate of the respondent no. 2 is at Exhibit A.W.1/7.

3. The respondents were not regular in the repayment of the loan amount. Accordingly, notice dated 3rd November 1999 under Registered A/D was issued to the respondents calling upon them to pay the amount outstanding. The office copy of the said notice is at Exhibit A.W.1/9. Exhibit A.W.1/10 is another notice dated 13th October 2000. Despite receipt of the notices, the respondents have not repaid the amount to the company under liquidation. Exhibits A.W.1/11, A.W.1/12 and A.W.1/13 are the various reminders sent to the respondents. Despite receipt of the letters, the respondents have not cleared the amount outstanding against their names at the foot of the account. The extract of the loan ledger is at Exhibit A.W.1/8.

4. Since the respondents are absent, the claim of the applicant for Rs. 1,69,717/- with interest at

the rate of 24% p.a. and costs of Rs. 10,000/- is decreed against the respondents. Company Application is, accordingly, allowed.

(P.V. HARDAS)
JUDGE.

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